

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Thomas Holman  
Bankruptcy Judge  
Modesto, California

**May 25, 2004 1:30 P.M.**

1. 04-91021-A-13 PAUL & VICKI RAMIREZ  
CWC #2  
DIVERSIFIED VENTURES GROUP, LLC VS.

HEARING ON MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4/22/04 [15]

**Tentative Ruling:** The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The debtors' opposition is unavailing. The court does not find cause for relief from the automatic stay in the debtors' failure to make the April, 2004 mortgage payment. This case was filed March 16, 2004. The first post-petition mortgage payment was the April, 2004 payment. This is a conduit case (post-petition mortgage payments through the trustee), and it is administratively impossible for the trustee to make the first post-petition mortgage payment when the first plan payment is not due until the 25<sup>th</sup> of the month following the month of the filing. See G.O. 03-03, ¶ 5(a). However, the debtors do not dispute movant's allegations that they have failed to pay post-petition taxes and failed to maintain post-petition insurance. The debtors cannot avoid their obligations to pay taxes and maintain insurance simply by claiming that there is equity in the property.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling. Pursuant to Bankruptcy Rule 9021, the order shall not recite the reasons stated herein. It shall state only that, for the reasons stated by the court and appended to the minutes of the proceedings, (1) the automatic stay is modified in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, and to use the proceeds from its disposition to satisfy its claim including attorneys' fees awarded herein, (2) the 10-day period specified in

Fed.R.Bankr.P. 4001(a)(3) is not waived, (3) attorneys' fees and costs are granted in an amount equal to the lesser of \$675 or the amount actually billed, plus costs of \$150, and (4) except as so ordered, the motion is denied. See, Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 439 (9<sup>th</sup> Cir. BAP 1986).

2.	02-93926-A-13 DONALD R. MILLER, JR. & DRW #1 MARYELLEN MILLER BEAL BANK, S.S.B. VS.	CONT. HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 4/1/04 [85]
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**Tentative Ruling:** This motion was filed under the provisions of LBR 9014-1(1)(f)(2), and at the preliminary hearing, a briefing schedule was set. The debtors filed a response under that schedule, and the movant did not file a reply.

The motion is granted to the extent set forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The declaration filed by the paralegal at the debtors' counsel's law office is unavailing. The paralegal's declaration is filled with inadmissible hearsay, and the attachment Exhibit B shows nothing more than the debtors' unsupported allegation that they made five payments of \$497.29 not shown on movant's payment history. Most of all, the paralegal's request for an evidentiary hearing is wholly improper. The paralegal is not an attorney and cannot make such a request without engaging in the unauthorized practice of law. All those problems notwithstanding, the debtors have at most alleged payments totaling \$5,486.45 on a post-petition delinquency of more than \$8,200.00. Even accepting the debtors' allegations as true, the debtors failed in their burden under § 362(g)(2), and there is no basis to support continuation of the automatic stay.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys' fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling. Pursuant to Bankruptcy Rule 9021, the order shall not recite the reasons stated herein. It shall state only that, for the reasons stated by the court and appended to the minutes of the proceedings, (1) the automatic stay is modified in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, and

to use the proceeds from its disposition to satisfy its claim including attorneys' fees awarded herein, (2) the 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived, (3) attorneys' fees and costs are granted in an amount equal to the lesser of \$675 or the amount actually billed, plus costs of \$150, and (4) except as so ordered, the motion is denied. See, Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 439 (9<sup>th</sup> Cir. BAP 1986).

3. 03-91627-A-13 DANNY & ANNA QUIHUIZ  
MPD #1  
OPTION ONE MORTGAGE CORP. VS.

HEARING ON MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
PART II  
4/28/04 [22]

**Disposition Without Oral Argument:** This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling. Pursuant to Bankruptcy Rule 9021, the order shall not recite the reasons stated herein. It shall state only that, for the reasons stated by the court and appended to the minutes of the proceedings, (1) the automatic stay is modified in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, and to use the proceeds from its disposition to satisfy its claim including attorneys' fees awarded herein, (2) the 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived, (3) attorneys' fees and costs are granted in an amount equal to the lesser of \$675 or the amount actually billed, plus costs of \$150, and (4) except as so ordered, the motion is denied. See, Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 439 (9<sup>th</sup> Cir. BAP 1986).

4. 02-94641-A-13 FAUSTINO RODRIGUEZ & CONT. HEARING ON MOTION FOR  
RJC #1 SYLVIA BARRETO RELIEF FROM AUTOMATIC STAY  
DRIVE FINANCIAL SERVICES, INC. VS. 4/13/04 [69]

**Tentative Ruling:** This motion was filed under the provisions of LBR 9014-1(1)(f)(2), and at the preliminary hearing, a briefing schedule was set. Under that schedule, the debtors filed a response and the movant filed a reply.

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim, all in accordance with applicable non-bankruptcy law.

The declaration filed by the paralegal at the debtors' counsel's law office is unavailing. It states only that the debtors promised on or before May 11, 2004 to bring in a partial payment of the alleged arrears to the debtors' counsel's office on or before May 17, 2004 and that the paralegal believes the debtors and the creditor can "work the numbers out." The latter statement is either completely irrelevant [See FRE 401] or is an attempt to present argument for the debtors, which constitutes the unauthorized practice of law. The debtors have failed to carry their burden under § 362(g)(2), and there is no basis to support continuation of the automatic stay.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling. Pursuant to Bankruptcy Rule 9021, the order shall not recite the reasons stated herein. It shall state only that, for the reasons stated by the court and appended to the minutes of the proceedings, (1) the automatic stay is modified in order to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim, (2) the 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived, and (3) except as so ordered, the motion is denied. See, Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 439 (9<sup>th</sup> Cir. BAP 1986).

5. 04-90451-A-13 RUSSELL STEWART HEARING ON OBJECTIONS  
KCC #1 TO CONFIRMATION OF PLAN  
FILED BY AMERICAN GENERAL  
FINANCE  
4/19/04 [13]

**Disposition Without Oral Argument:** Oral argument would not benefit the court in rendering a decision on this matter.

The objection is denied as moot. This objection was filed on April 19, 2004, to a plan filed on March 9, 2004. Since, the debtor filed an amended plan on April 23, 2004, the plan to which the creditor objected is no longer before the court. In any event, since the April 23, 2004, plan was filed the Friday before a section 341 meeting set on the following Wednesday, it cannot be confirmed without a separate hearing to provide proper notice to creditors of the plan terms. Should the creditor object to the current plan, it can file a response to the motion to confirm. The court notes the trustee has set a motion to dismiss the case on the June 2, 2004 calendar, based in part on the debtor's failure to file and set for confirmation another amended plan, pursuant to a stipulation.

The court also notes that this matter violates LBR 9014-1(c)(3) because it and the motion at matter No. 6 use the same docket control number. This alone would be grounds to overrule the objection. LBR 9014-1(l). The court will enforce strictly the use of correct docket control numbers as the court moves to electronic submission of papers.

The court will issue a minute order.

6.	04-90451-A-13 RUSSELL STEWART KCC #1 AMERICAN GENERAL FINANCE VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 4/27/04 [17]
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**Disposition Without Oral Argument:** Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This motion fails to comply with LBR 4001-1(d)(2)(requiring, *inter alia*, the movant to provide a certification that it conferred with the chapter 13 trustee before the motion was filed and confirmed that the alleged plan delinquency was outstanding within 10 days of the filing of the motion). The creditor is treated as a Class 1 claim in the pending amended conduit plan, and the payments to the movant are through the chapter 13 trustee. Furthermore, the motion violates LBR 9014-1(c)(3), and improperly additionally seeks the dismissal of the case and a re-filing bar in the context of this motion for relief from stay.

A copy of the current local rules of this court is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court will issue a minute order.

7.	00-93053-A-13 NAPOLEON E. FELIX, JR. ASW #1 CITIMORTGAGE, INC. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 4/23/04 [72]
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**Tentative Ruling:** The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order

to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The debtor's opposition is unavailing. While debtor submitted evidence of payment, the docket shows that his 42 month plan length has concluded. (ECF-60; see also, ECF-61). Thus, there is no effective pending plan which provides for this creditor's claim. There is no basis to support continuation of the automatic stay.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling. Pursuant to Bankruptcy Rule 9021, the order shall not recite the reasons stated herein. It shall state only that, for the reasons stated by the court and appended to the minutes of the proceedings, (1) the automatic stay is modified in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, and to use the proceeds from its disposition to satisfy its claim including attorneys' fees awarded herein, (2) the 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived, (3) attorneys' fees and costs are granted in an amount equal to the lesser of \$675 or the amount actually billed, plus costs of \$150, and (4) except as so ordered, the motion is denied. See, Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 439 (9<sup>th</sup> Cir. BAP 1986).

8.	00-90558-A-13 TONY & MARGARET FREITAS TJH #1 GMAC MORTGAGE CORPORATION OF IOWA VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 4/14/04 [38]
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**Tentative Ruling:** The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The debtors' opposition is unavailing. This plan is concluded. (See, ECF-42, Final Report and Account of Chapter 13 Trustee). Thus, there is no effective pending plan which provides for this creditor's claim.

There is no basis to support continuation of the automatic stay.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling. Pursuant to Bankruptcy Rule 9021, the order shall not recite the reasons stated herein. It shall state only that, for the reasons stated by the court and appended to the minutes of the proceedings, (1) the automatic stay is modified in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, and to use the proceeds from its disposition to satisfy its claim including attorneys' fees awarded herein, (2) the 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived, (3) attorneys' fees and costs are granted in an amount equal to the lesser of \$675 or the amount actually billed, plus costs of \$150, and (4) except as so ordered, the motion is denied. See, Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 439 (9<sup>th</sup> Cir. BAP 1986).

9.	03-92560-A-13 RUBEN F. FLORES, JR. & MB #1 CHRISTINA FLORES THE LEADER MORTGAGE COMPANY VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 4/19/04 [41]
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**Tentative Ruling:** This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). In this instance, the court issues a tentative ruling.

This motion pertains to the first deed of trust on the subject property. The motion is granted to the extent set forth herein as to the debtors' interest, and continued to June 29, 2004 at 2:00 p.m, to allow service on the Chapter 7 trustee, regarding the estate's interest in this property. The debtors converted this case to chapter 7 on May 24, 2004. The movant shall provide at least 14 days notice of this continued motion to the Chapter 7 trustee, and opposition by the Chapter 7 trustee shall be allowed at the hearing. A copy of the minute order shall be attached to the notice provided to the Chapter 7 trustee.

The automatic stay is modified as to the debtors pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

The court will issue a minute order.

10.	03-92560-A-13 RUBEN F. FLORES, JR. & MB #2 CHRISTINA FLORES THE LEADER MORTGAGE COMPANY VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 4/19/04 [48]
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**Tentative Ruling:** This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). In this instance, the court issues a tentative ruling.

This motion pertains to the second deed of trust on the subject property. The motion is granted to the extent set forth herein as to the debtors' interest, and continued to June 29, 2004 at 2:00 p.m, to allow service on the Chapter 7 trustee, regarding the estate's interest in this property. The debtors converted this case to chapter 7 on May 24, 2004. The movant shall provide at least 14 days notice of this continued motion to the Chapter 7 trustee, and opposition by the Chapter 7 trustee shall be allowed at the hearing. A copy of the minute order shall be attached to the notice provided to the Chapter 7 trustee.

The automatic stay is modified as to the debtors pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

The court will issue a minute order.



11. 02-94162-A-13 DOUGLAS & JANICE CLOUD  
LJB #1  
CITICORP TRUST BANK VS.

HEARING ON MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
AND FOR LEAVE TO EXERCISE  
POWER OF SALE IN DEED OF  
TRUST TO REAL PROPERTY; OR,  
ALTERNATIVELY, FOR ADEQUATE  
PROTECTION; ATTORNEY FEES  
4/20/04 [27]

**Tentative Ruling:** This matter involves disputed facts that cannot be resolved on declarations. The parties shall be prepared to discuss: (1) a discovery schedule, if necessary; and (2) an evidentiary hearing date.

12. 02-92178-A-13 SAMUEL MORALES, JR. &  
RSS #1 PATRICIA MORALES  
CENLAR FEDERAL SAVINGS BANK VS.

CONT. HEARING ON MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
PART II  
4/14/04 [13]

**Tentative Ruling:** This motion was filed under the provisions of LBR 9014-1(1)(f)(2), and at the preliminary hearing, a briefing schedule was set. Under that schedule, the debtors filed a response and the movant filed a reply.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

The debtors' opposition is unavailing. The debtors failed in their burden under § 362(g)(2), by not providing any documentary evidence they made the alleged missed payments, such as cancelled checks, withdraws from their bank account from electronic transfers or payment confirmation numbers. In other words, the debtors did not provide the court with a sufficient evidentiary basis to find that the alleged missed payments have been made. Thus, there is no basis to support continuation of the automatic stay.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling. Pursuant to Bankruptcy Rule 9021, the order shall not recite the reasons stated herein. It shall state only that, for the reasons stated by the court and appended to the minutes of the proceedings, (1) the automatic stay is modified in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, and to use the proceeds from its disposition to satisfy its claim including attorneys' fees awarded herein, (2) the 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived, (3) attorneys' fees and costs are granted in an amount equal to the lesser of \$675 or the amount actually billed, plus costs of \$150, and (4) except as so ordered, the motion is denied. See, Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 439 (9<sup>th</sup> Cir. BAP 1986).

13. 02-93396-A-13 RUSSELL & DEBRA GILES LJB #2 WELLS FARGO HOME MORTGAGE, INC. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY AND FOR LEAVE TO EXERCISE POWER OF SALE IN DEED OF TRUST TO REAL PROPERTY OR ALTERNATIVELY FOR ADEQUATE PROTECTION; ATTORNEY'S FEES 4/29/04 [66]
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**Tentative Ruling:** The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtor (1) pays the May 2004 and all future mortgage payments during the term of the plan within the grace period, if any, (2) becomes completely post-petition current in mortgage payments, including any associated late fees, by direct post-petition payments by June 1, 2004, and (3) pays the May and June 2004 chapter 13 plan payments to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtor(s) default in post-petition mortgage payments during the period: Not applicable.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

14. 04-90897-A-13 CANDI D. PERKINS  
CWC #2

HEARING ON OBJECTION  
TO CONFIRMATION OF  
CHAPTER 13 PLAN AND  
REQUEST TO DISMISS CASE  
FILED BY KENNETH & SUSAN  
INGRAM  
4/26/04 [11]

**Tentative Ruling:** The secured creditor's objections are sustained, plan confirmation is denied, and the case is dismissed pursuant to § 1307(c)(1) and (5).

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The motion to dismiss is granted. The evidence shows the debtor is not eligible to be a chapter 13 debtor and has no income to fund any possible plan. This is cause to dismiss this case. The debtor's assertion that a significant other's income is "tantamount" to the income of a spouse for the purposes of chapter 13 is without citation and incorrect. In re Jordan, 226 B.R. 117 (Bankr. D. Mont. 1998)(debtor who was dependent on gratuitous financial support by live-in boyfriend of 19 years, as a main source of income to fund proposed chapter 13 plan, was not an individual with regular income eligible to file a chapter 13 petition). The debtor must have her own regular source of income to fund her plan. The debtor is disabled, and the only stated income on her schedule I belongs to an unidentified "Significant other." The source of income for this person is also undisclosed, but the schedule I states "His income varies." Furthermore, there is no evidence this person has legally obligated himself to provide for the debtor.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

15. 04-90897-A-13 CANDI D. PERKINS  
CWC #3  
KENNETH & SUSAN INGRAM VS.

HEARING ON MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4/26/04 [16]

**Tentative Ruling:** The motion is denied as moot, because the case is dismissed in matter No. 14 on this calendar.

Even if the case were not dismissed, the motion for relief from the automatic stay would have been granted. Cause for relief is shown by the lack of evidence showing insurance and payment of property taxes.

Counsel for the movant shall submit an order that conforms to the court's ruling.

16. 04-90599-A-13 ANTONIO JOSEPH  
JMP #1  
HOUSEHOLD MORTGAGE SERVICES VS.

HEARING ON MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4/15/04 [19]

CASE DISMISSED EOD 4/30/04

**Disposition Without Oral Argument:** The motion is denied as moot because the case was dismissed April 30, 2004.

The court will issue a minute order.

17. 04-91277-A-13 ALAN C. TURNER

HEARING ON ORDER TO  
SHOW CAUSE RE DISMISSAL,  
CONVERSION OR IMPOSITION OF  
SANCTIONS FOR FAILURE OF  
DEBTOR AND/OR DEBTOR'S  
ATTORNEY TO FILE SUMMARY,  
DECLARATION RE: SCHEDULES  
AND DECLARATION RE:  
STATEMENT OF FINANCIAL  
AFFAIRS 4/26/04 [19]

**Tentative Ruling:** None.

18. 04-90178-A-13 ARMANDO & MONICA VASQUEZ

HEARING ON ORDER TO  
SHOW CAUSE RE DISMISSAL,  
OR IMPOSITION OF SANCTIONS  
FOR FAILURE OF DEBTORS TO  
PAY FILING FEE INSTALLMENT  
(\$44.00 DUE APRIL 15,  
2004)  
4/30/04 [38]

**Tentative Ruling:** None.

19. 04-90178-A-13 ARMANDO & MONICA VASQUEZ  
FW #1

HEARING ON MOTION TO  
CONFIRM CHAPTER 13 PLAN  
4/7/04 [31]

**Tentative Ruling:** The trustee's objections sustained, and the motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (6). The court notes the debtors do not dispute their plan is not confirmable. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

20. 03-92000-A-13 KARIN RASOOL & HEARING ON MOTION  
FW #2 AMIRA MUHAMMAD TO INCUR DEBT  
4/21/04 [29]

**Disposition Without Oral Argument:** This matter was withdrawn by the moving party on May 13, 2005, and is removed from calendar.

21. 03-92000-A-13 KARIN RASOOL & HEARING ON MOTION TO  
FW #3 AMIRA MUHAMMAD MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
4/21/04 [33]

**Disposition Without Oral Argument:** This matter was withdrawn by the moving party on May 13, 2005, and is removed from calendar.

22. 02-94701-A-13 SOOGA & ETEREI ETELAGI HEARING ON MOTION TO  
FW #1 MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
4/19/04 [37]

**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

23. 03-91802-A-13 PAMELA J. LOOPER HEARING ON MOTION TO  
DCJ #6 CONFIRM AMENDED CHAPTER 13  
PLAN (FEB. 18, 2004)  
4/7/04 [88]

**Tentative Ruling:** The motion is conditionally granted, the condition being that the order confirming the plan include the attorney's fee term sought by the trustee and agreed to by the debtor in the reply. The court notes the debtor and her attorney executed a Right & Responsibilities form on May 19, 2003. In the absence of any other opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

Within five (5) days, counsel for the debtor shall submit orders in matters known as DC No. DCJ-2, DCJ-3, DCJ-4, and DCJ-5, as previously directed by this court. (ECF-70-73). The court will not sign the order confirming the plan unless all orders are submitted.

24. 04-90902-A-13 ANDY & TAASE JENNINGS  
RLE #1

HEARING ON OBJECTION  
TO CONFIRMATION OF DEBTORS'  
CHAPTER 13 PLAN AND TO THE  
MOTION TO VALUE ITS  
COLLATERAL FILED BY  
DAIMLERCHRYSLER SERVICES  
NORTH AMERICA LLC  
4/26/04 [14]

**Disposition Without Oral Argument:** This matter is continued to June 22, 2004, at 1:30 p.m., to be heard concurrently with the trustee's objections to the same plan and corresponding motions.

The court will issue a minute order.

25. 04-90603-A-13 ROBERT & LYNN ROBLES  
JCK #1

HEARING ON MOTION TO  
CONFIRM THE FIRST AMENDED  
CHAPTER 13 PLAN  
4/8/04 [13]

**Tentative Ruling:** The trustee's objection is sustained, and the motion to confirm is denied. The attached unopposed motion is granted.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The unopposed motion to value the collateral of Tracy Federal Credit Union is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). That creditor's collateral, a 1997 Chevrolet S10 pick-up, had a value of \$5,655 on the date of the petition. Thus, \$5,655 of its claim is an allowed secured claim, based on this valuation.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

26. 03-93505-A-13 MICHAEL GOULET &  
FW #1 KATHALENE WENTZ

HEARING ON MOTION TO  
SELL REAL PROPERTY  
4/19/04 [38]

**Tentative Ruling:** The motion to sell 213 S. Acacia Street in Ripon, California, is conditionally granted subject to the inclusion of the trustee's standard conditions. The stay of Rule 6004(g) is waived.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

27. 04-90605-A-13 KENNETH & M'BETA KING  
RDG #2

HEARING ON TRUSTEE'S  
OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
4/19/04 [19]

**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The trustee's plan objections are overruled as moot, because the docket shows the debtors filed an amended plan on May 5, 2004. The court notes, however, that the amended plan does not cure all of the trustee's objections. For example, the amended plan also fails to provide for the full arrears claim of Washington Mutual Bank.

The trustee's motion to dismiss is granted, pursuant to § 1307(c). The debtors have not responded to this motion, indicating their consent to the dismissal of this case under the local bankruptcy rules. Furthermore, they have not proposed a plan which fully and properly provides for their creditors. The history of this case, including debtors' proposal of an insufficient chapter 13 plan, their failure to respond to the trustee's objection and motion to dismiss and their failure to seek additional time to propose a sufficient plan, shows cause for dismissal under 11 U.S.C. §§ 1307(c)(1) and (5).

The trustee shall submit an order that conforms to the court's ruling.

28. 03-91406-A-13 JEFFERY & MICHELLE DUNN  
FW #3

HEARING ON MOTION  
TO INCUR DEBT  
4/20/04 [46]

**Tentative Ruling:** The motion to incur debt is conditionally granted subject to the inclusion of the trustee's standard conditions, including the debtors modification of the plan. The debtors need not object to the Chase Manhattan claim, as requested by the trustee, since the docket shows the creditor withdrew the offending claim. (ECF-53). Subject to those conditions, incurring the new debt is consistent with the debtors performance of the confirmed plan.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

29. 04-90806-A-13 GEORGE & ANNETTE ANDERSON  
GLM #1

HEARING ON OBJECTION  
TO NOTICE OF MOTION TO  
AVOID LIENS OF GAGEN,  
MCCOY, MAHAON & ARMSTRONG  
ON BEHALF OF JOE FONZI'S  
HALL OF FAME  
4/26/04 [19]

**Disposition Without Oral Argument:** This matter is continued to June 8, 2004, at 1:30 p.m., to be heard concurrently with other objections to this plan. At that time, the court anticipates setting an evidentiary

hearing on the value of the debtors' residence.

The court will issue a minute order.

30.	03-92808-A-13    TONY & REGINA FIERRO FW #1	HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 3/26/04 [30]
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**Tentative Ruling:** The trustee's objections are sustained, and the motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

31.	04-90808-A-13    SHELDON & STRAWBERRY JCK #1                HASELWOOD	HEARING ON MOTION TO CONFIRM CHAPTER 13 PLAN 4/8/04 [20]
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**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

The attached unopposed motion to value the collateral of Americredit is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, 1997 Plymouth Voyager, had a value of \$6,483 on the date of the petition. Thus, \$6,483 of its claim is an allowed secured claim, based on this valuation.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the plan.

32.	03-90610-A-13    DAVID & LINDA DICE FW #1	HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 4/7/04 [18]
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**Tentative Ruling:** The motion is granted. The trustee's concern regarding the claim of Citifinancial is cured; the court sustained the debtors' objection. In the absence of any other opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.



Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

33. 03-90610-A-13 DAVID & LINDA DICE  
FW #2

HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
CITIFINANCIAL  
4/7/04 [22]

**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The objection to claim No. 10 on ECF filed by Citifinancial, ("Claim") is sustained.

The Claim is disallowed as a secured claim and allowed as a general unsecured claim, except to the extent already paid as a secured claim by the trustee in excess of the dividend to unsecured claims. The Claim does not constitute prima facie evidence of the validity and amount of the Claim. There are no attached security documents or proof of perfection. B.R. 3001(c) and (d). The creditor failed to carry its burden of proving the claim.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

34. 03-93711-A-13 JUDY ANN COONEY  
FW #1

CONT. HEARING ON MOTION TO  
CONFIRM AMENDED CHAPTER 13  
PLAN  
12/10/03 [37]

**Tentative Ruling:** The motion to confirm is denied.

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5). The plan does not provide for the claim of GMAC Mortgage as filed, and the debtor withdraw her claim objection on May 21, 2004. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the debtor shall submit an order that conforms to the court's ruling.

35. 03-93711-A-13 JUDY ANN COONEY  
FW #3

CONT. HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
GMAC MORTGAGE CORPORATION  
3/15/04 [57]

**Disposition Without Oral Argument:** This matter was withdrawn by the objecting party on May 21, 2004, and is removed from calendar.

36. 03-90112-A-13 JERRY & PEARL COOPER  
IRS #1

HEARING ON MOTION TO  
DISMISS FILED BY THE UNITED  
STATES OF AMERICA, INTERNAL  
REVENUE SERVICE  
4/6/04 [37]

**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The motion to dismiss this case is granted, pursuant to 11 U.S.C. § 1307(c)(1) and (6). The uncontradicted evidence shows the debtors breached the terms of the confirmed plan by failing to pay post-petition taxes, completing post-petition tax returns, and incurring aggregate new debt in excess of \$1,000.

Counsel for the movant shall submit an order that conforms to the court's ruling.

37. 04-90213-A-13 FERNE C. LACASSE  
MSN #1

HEARING ON MOTION TO  
CONFIRM AMENDED CHAPTER 13  
PLAN  
4/9/04 [19]

**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The motion is granted. In the absence of opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

38. 03-94414-A-13 JAMES KUMMER  
FW #4

HEARING ON MOTION TO  
CONFIRM THIRD AMENDED  
CHAPTER 13 PLAN; MOTION  
TO VALUE  
4/7/04 [47]

**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

The attached unopposed motion to value the collateral of Americredit is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, 2001 Dodge pick-up, had a value of \$14,600 on the date of the petition. Thus, \$14,600 of its claim is an allowed secured claim, based on this valuation.

Counsel for the debtor shall submit an order that conforms to the court's

ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the plan.

39.	03-94414-A-13 JAMES KUMMER FW #5	HEARING ON MOTION TO VALUE COLLATERAL OF THE INTERNAL REVENUE SERVICE 4/7/04 [42]
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**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The motion is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, all of debtor's personal property, had a value of \$5,205 in equity on the date of the petition. Thus, \$5,205 of creditor's claim is an allowed secured claim, based on this valuation.

Counsel for debtor shall submit an order that conforms to the court's ruling.

40.	04-90615-A-13 JENNIFER DREW FW #1	HEARING ON MOTION TO CONFIRM FIRST AMENDED CHAPTER 13 PLAN 4/14/04 [16]
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**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The motion is granted. In the absence of opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

41.	03-94116-A-13 RONALD & ELIZABETH RDG #2 WILLIAMS	HEARING ON TRUSTEE'S OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 4/22/04 [51]
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**Disposition Without Oral Argument:** Oral argument would not benefit the court in rendering a decision in this matter.

The trustee's objection is overruled as moot. While the debtors failed to respond to this objection, the court's review of the docket shows they filed amended exemptions on May 6, 2004. Thus, the exemption to which the trustee objected is no longer before the court.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

42. 03-90617-A-13 KEVIN ALLEN  
FW #1

HEARING ON MOTION TO  
MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
4/5/04 [45]

**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

43. 03-90617-A-13 KEVIN ALLEN  
FW #2

HEARING ON OBJECTION  
TO CLAIM OF VOLKSWAGEN  
CREDIT  
4/7/04 [51]

**Disposition Without Oral Argument:** The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 8 on ECF, filed by Volkeswagon Credit, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was June 24, 2004, and to file a government claim was August 13, 2003. Creditor filed the Claim for \$21,226.56 on August 25, 2003.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

Counsel for the debtor shall submit an order that conforms to the court's ruling.

44. 03-93518-A-13 STANLEY NEWBY  
FW #2

HEARING ON MOTION TO  
MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
4/20/04 [41]

**Tentative Ruling:** The objections raised by American General are set for hearing. The matter involves disputed facts that cannot be resolved on declarations. The parties shall be prepared to discuss: (1) a discovery schedule, if necessary; and (2) an evidentiary hearing date.

The objections raised by the trustee and secured creditor Ford have been resolved by the terms set forth in the debtor's reply.

45. 03-94421-A-13 SCOTT & ARACELY SAVOLDI  
FW #2

HEARING ON MOTION TO  
CONFIRM SECOND AMENDED  
CHAPTER 13 PLAN; MOTIONS  
TO VALUE  
4/7/04 [60]

**Tentative Ruling:** The motion is conditionally granted, the condition being that an order confirming the plan provide the terms sought by the trustee in his opposition and agreed to in the debtors' reply. In the absence of other opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

The attached unopposed motion to value the collateral of WF Equip Express is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, Cargo Trailer and 1985 utility bucket, had a value of \$7,500 on the date of the petition. Thus, \$7,500 of its claim is an allowed secured claim, based on this valuation.

The attached unopposed motion to value the collateral of Fireside Thrift & Loan is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, 2000 GMC Sierra, had a value of \$20,000 on the date of the petition. Thus, \$20,000 of its claim is an allowed secured claim, based on this valuation.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

46. 04-90423-A-13 LAWRENCE & ELLEN  
FW #1 RICHARDS

HEARING ON MOTION TO  
CONFIRM AMENDED CHAPTER 13  
PLAN, MOTION TO VALUE  
COLLATERAL  
4/6/04 [36]

**Tentative Ruling:** The trustee's objection is sustained, and the motion to confirm is denied. The debtors have failed to carry their burden of establishing feasibility. 11 U.S.C. § 1325(a)(6). Neither the debtors, nor a mortgage broker, nor a loan officer can predict either the value of real estate three years from now or the availability of a loan for which the debtors will qualify to fund a \$48,000.00 balloon payment.

This is a simple case of back-loading the plan with payments that the debtors cannot afford to make from their income, but that they hope to be able to make in the future through continued real estate appreciation and continued low interest rates.

Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

47. 03-91624-A-13 DELANIE KELLER  
DN #2

CONT. HEARING ON MOTION TO  
MODIFY PLAN  
3/4/04 [21]

**Tentative Ruling:** The trustee's objections are sustained in part and overruled in part and the motion is denied. The trustee's objection regarding the failure to provide for the priority claim of Prevention Medical Clinic is overruled because debtor's objection to the priority status of that claim is sustained below at matter 48. The trustee's remaining objection is sustained. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325 (a)(5) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

48. 03-91624-A-13 DELANIE KELLER  
DN #3

HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
CREDITOR PREVENTION MEDICAL  
CLINIC FILED MAY 13, 2003  
FOR \$265.46  
4/8/04 [28]

**Disposition Without Oral Argument:** The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 2 on the Notice of Filed Claims, filed by Prevention Medical Clinic, ("Claim") is resolved without oral argument.

The objection is sustained. The debtor questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]; however, the Claim is not properly completed where it claims a priority interest but did not specify which subsection of §507(a) supports that classification, as directed to on the proof of claim, Box 6. Thus, the Claim does not constitute prima facie evidence of the nature of the Claim. The objection is sustained and the Claim is disallowed as a priority claim and allowed as a general unsecured claim, except to the extent already paid as a priority claim by the trustee in excess of the dividend to unsecured claims.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

49. 03-90428-A-13 ANTHONY & RENEE RUSSELL  
FW #4

HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
CAVALRY PORTFOLIO SERVICES  
4/7/04 [62]

**Disposition Without Oral Argument:** The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 12 on the Court's claims register, filed by Cavalry Portfolio Services, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was June 17, 2003, and to file a government claim was August 4, 2003. Cavalry Portfolio Services filed the Claim for \$14,303.21 on November 6, 2003.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

Counsel for debtors shall submit an order that conforms to the court's ruling.

50. 01-94229-A-13 ANTOINETTE STUART  
FW #2

HEARING ON MOTION TO  
INCUR DEBT  
4/29/04 [53]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court is aware of the trustee's response but other parties may oppose the motion. Therefore, the court issues no tentative ruling on the merits of the motion.

51. 02-91229-A-13 PAUL & JANE LESTER  
DN #2

HEARING ON MOTION TO  
MODIFY PLAN  
4/8/04 [34]

**Tentative Ruling:** The trustee's opposition is conditionally overruled if debtor provides that missed plan payments are suspended through March 2004 in the order confirming plan. Ordinarily the court will not permit suspension of plan payments in the order confirming plan. But here, the correct date appears in the motion and it is a simple typographical error in the additional provisions section of the proposed plan. With the aforementioned change, the motion is granted. In the absence of additional opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall

include a specific reference to the filing date of the modified plan.

52. 00-90935-A-13 ERSUL & GAIL SANDERS  
IRS #1

CONT. HEARING ON MOTION TO  
DISMISS WITH PREJUDICE  
FILED BY THE UNITED STATES  
OF AMERICA, INTERNAL REVENUE  
SERVICE  
3/3/04 [57]

**Tentative Ruling:** This matter continued because counsel for movant could not be understood by the court (bad phone connection) and so that debtors could get a motion to refinance their house on calendar. That refinance motion has been calendared but opposition may be presented at the hearing. Therefore, the court reissues its prior ruling.

The debtors' opposition is overruled and the motion to dismiss is granted in part and denied in part, as set forth below.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion to dismiss is granted pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(6). The dismissal is without prejudice as that term is used in 11 U.S.C. §349(a)(see below) but the debtors are barred from filing any new bankruptcy case before October 25, 2004. It is undisputed that debtors have failed to file any of their post-petition tax returns and have not paid any estimated taxes since filing this case. It is also undisputed that debtors scheduled an expense of \$1,250 per month for Federal taxes on Schedule J. Finally, it is undisputed that the confirmed plan requires debtors to file all post-petition tax returns in a timely fashion. (Plan, Section IV(D)(e)). Incurring the \$35,000 in post-petition tax debt (which the debtors admit) also constitutes incurring new debt without the permission of the trustee or order of the court. (Plan, Section IV(D)(b)).

The debtors' actions constitute material breaches of their confirmed plan. The violations are particularly egregious because dealing with delinquent tax debt was the principal reason this case was filed. The debtors' proposed last minute cure is insufficient. For these reasons, the case is dismissed.

The United States misconstrues the import of a dismissal with prejudice under 11 U.S.C. § 349(a). Under the holding of In re Leavitt, 171 F.3d 1219, 1223-24 (9<sup>th</sup> Cir. 1999), the decision affirming the Bankruptcy Appellate Panel decision (mis-) cited by movant, "[a] dismissal with prejudice bars further bankruptcy proceedings between the parties and is a complete adjudication of the issues." A dismissal with prejudice would make the debtors' debts as they existed on the date of petition non-dischargeable forever. There is no indication in the motion that movant seeks that extreme relief nor does the court find that it is warranted in this situation.



However, the court does find that debtors have willfully failed to comply with the confirmation order and their confirmed plan in this case. Debtors are no strangers to bankruptcy and are well aware of their obligation to follow the terms of the confirmed plan. Their utter failure to do so constitutes a willful violation of the order confirming their plan. Therefore, debtors are barred from filing bankruptcy under any chapter before November 22, 2004. 11 U.S.C. § 109(g)(1).

Counsel for the United States shall submit an order that conforms to the court's ruling.

53. 02-94735-A-13 DONNA M. COIL  
SSA #16

HEARING ON APPLICATION  
FOR APPROVAL OF COMPROMISE  
4/23/04 [157]

**Disposition Without Oral Argument:** The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re A & C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. Id.

The compromise in question arises from litigation between the debtor and Janet Pierson, debtor's daughter, over ownership of a parcel of real property located at 928 Grimes Avenue, Modesto California. Ms. Pierson alleged that debtor agreed to transfer the real property to her if Ms. Pierson would pay for the upkeep on the property and take over the mortgage payments. Ms. Pierson further alleged she made improvements to the property in reliance on the agreement and also that she gave the debtor artwork worth \$30,000 as partial consideration for the transfer. Debtor disputed the allegations and alleged that Ms. Pierson owed \$32,500 to pay back a prior loan. Debtor also alleged that Ms. Pierson's use of the property was as a rental and that she owed back rent.

The real property was sold pursuant to this court's March 22, 2004 order free and clear of liens and interests. Ms. Pierson's interest in the property, if any, transferred to the proceeds from the sale. Those monies amount to approximately \$122,000.00. The court granted relief

from the automatic stay to allow the parties to proceed in state court to liquidate Ms. Pierson's claim.

Prior to trial in the state court the parties were sent to a non-binding mediation. The mediation was successful and resulted in the following settlement: Ms. Pierson will receive \$12,000 from the net proceeds. She will also receive back the three pieces of artwork given to debtor. Debtor will retain the remaining proceeds. The state court proceeding will be dismissed with prejudice with each party to bear their own fees and costs.

On the whole, the A&C factors favor the approval of the compromise.

Accordingly, the court finds that the debtor has carried her burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

Counsel for debtor shall submit an order that conforms to the court's ruling.

54. 03-95038-A-13 WILLIE D. CRAIG  
FW #1

CONT. HEARING ON MOTION TO  
VALUE COLLATERAL OF  
AMERICREDIT  
2/24/04 [30]

CASE DISMISSED EOD 5/3/04

**Disposition Without Oral Argument:** The motion is denied as moot because this case was dismissed May 3, 2004.

The court will issue a minute order.

55. 03-95038-A-13 WILLIE D. CRAIG  
FW #2

CONT. HEARING ON MOTION TO  
CONFIRM AMENDED CHAPTER 13  
PLAN  
2/24/04 [36]

CASE DISMISSED EOD 5/3/04

**Disposition Without Oral Argument:** The motion is denied as moot because this case was dismissed May 3, 2004.

The court will issue a minute order.

56. 02-91539-A-13 STEVE & SHEILA HERRERA  
DN #2

CONT. HEARING ON DEBTORS'  
OBJECTION TO ALLOWANCE OF  
CLAIM OF CREDITOR LITTON  
LOAN SERVICE  
2/11/04 [29]

**Disposition Without Oral Argument:** This matter is continued to June 22, 2004 at 1:30 p.m. pursuant to stipulation approved May 24, 2004. It is removed from this calendar.

57. 04-91039-A-13 GARY G. SILVA  
RLE #1

HEARING ON OBJECTION  
TO CONFIRMATION OF  
DEBTOR'S CHAPTER 13 PLAN  
AND TO THE MOTION TO VALUE  
ITS COLLATERAL FILED BY  
DAIMLERCHRYSLER SERVICES  
NORTH AMERICA LLC  
4/26/04 [11]

**Disposition Without Oral Argument:** The objections to confirmation are overruled as moot because the case converted to chapter 7 on May 19, 2004.

The court will issue a minute order.

58. 03-92040-A-13 LISA MCELLEY  
FW #1

CONT. HEARING ON MOTION TO  
MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
3/17/04 [15]

TR OPP WITHDRAWN 5/11/04

**Disposition Without Oral Argument:** This matter continued from April 27, 2004 so that the time to object to debtor's amended Schedule C could expire. It did so and no objections were filed. On May 11, 2004, the trustee withdrew his objection to this motion. No additional written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

59. 03-93740-A-13 JOSE & AUBREY GARZA  
FW #1

HEARING ON MOTION TO  
MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
4/12/04 [29]

**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

60. 03-94841-A-13 DENISE POOL  
FW #1

HEARING ON MOTION TO  
CONFIRM FIRST AMENDED  
CHAPTER 13 PLAN  
4/13/04 [36]

**Tentative Ruling:** The trustee's objection is conditionally overruled if the debtor includes his preferred language in the order confirming plan as consented in her reply. As further amended, the motion is granted. In the absence of additional opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

61. 03-90445-A-13 LARRY & CHRISTINE BROOKS  
JCK #4

HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
SHABBIR KHAN, TAX COLLECTOR  
4/13/04 [70]

**Disposition Without Oral Argument:** Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this matter.

The objection to claim is overruled without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This matter fails to comply with LBR 3007-1(d)(1)(requiring at least forty-four days notice for objections to claim requiring written opposition) and LBR 9014-1(d)(6)(requiring that factual allegations made in the moving papers be supported by evidence). Debtors only provided forty-two days notice of this hearing. There is also no declaration from the debtors attesting to conversations they had with either the bank or the claimant.

A copy of the current local rules of this court is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court will issue a minute order.

62. 02-94149-A-13 MICHAEL & DEBRA ALLEN  
FW #1

HEARING ON DEBTORS'  
MOTION TO VALUE COLLATERAL  
HELD BY AMERICAN GENERAL  
4/21/04 [21]

**Disposition Without Oral Argument:** The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a curio cabinet, had a value of

\$500.00 on the date of the petition. Thus, \$500.00 of its claim (006 on the Notice of Filed Claims) is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

63.	02-94149-A-13   MICHAEL & DEBRA ALLEN FW #2	HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 4/21/04 [25]
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**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

64.	03-94949-A-13   FRANCISCO & TERESA LOAYZA FW #2	HEARING ON MOTION TO CONFIRM AMENDED CHAPTER 13 PLAN 4/6/04 [23]
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**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

65.	01-90252-A-13   ROBERT VAN TUINEN FW #6	CONT. HEARING ON MOTION TO MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN 2/18/04 [94]
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**Tentative Ruling:** This matter continued from March 30, 2004 to April 27, 2004 to see if a refinance approved on that date closed escrow. The matter continued a second time for the trustee to submit his demand. Nothing new has been filed in this matter and there is no evidence that debtor has cured the trustee's objections.

Therefore, the trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to

satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

66. 03-91854-A-13 MARCELO VARGAS  
FW #1

HEARING ON MOTION TO  
MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
4/21/04 [26]

**Tentative Ruling:** The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

67. 03-91955-A-13 GARY & MARY ACOSTA  
PFF #1

CONT. HEARING ON MOTION TO  
MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
3/1/04 [26]

**Tentative Ruling:** The motion is denied without prejudice. This matter continued from April 13, 2004 to afford Calaveras County sufficient notice of debtors' April 8, 2004 plan reducing the interest rate paid on the County's claim to 10%. However, on April 28, 2004, the debtors filed another plan which increased the rate back up to 14%. The trustee has again objected to this change. Debtors have again consented in a reply to reduce the rate back to 10%. As stated in the prior tentative ruling, adverse changes such as this may not first appear in a reply. Creditors are entitled to notice. For this reason and because of the confused state of this matter with three plans noticed under the same docket control number, the motion is denied without prejudice. The debtors may file a plan that cures the trustee's remaining objection setting it on the requisite amount of notice.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

68. 04-90155-A-13 HAROLD & MIRIAM PLACHETA  
FW #1

CONT. HEARING ON MOTION TO  
CONFIRM CHAPTER 13 PLAN AND  
VALUE COLLATERAL OF SNAP ON  
3/11/04 [25]

**Tentative Ruling:** This matter continued from April 27, 2004. The court required debtors to submit a supplemental brief on or before May 11, 2004

to address various evidentiary deficiencies as well as legal issues specified in the April 27, 2004 ruling. Debtors did not do so. Therefore, the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(1) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

69.	04-90859-A-13 JOHN PATRICK ADRIAN JMP #1	HEARING ON OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY HOUSEHOLD MORTGAGE SERVICES 4/27/04 [15]
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**Disposition Without Oral Argument:** The objection is overruled as moot because this case converted to one under chapter 7 on May 19, 2004.

The court will issue a minute order.

70.	04-90060-A-13 GEORGE MARTINEZ FW #3	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF TRACY COMMUNITY HOSPITAL FILED JANUARY 26, 2004 3/29/04 [38]
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**Disposition Without Oral Argument:** The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 3 on the court's Claims Register, filed by Tracy Community Hospital, ("Claim") is resolved without oral argument.

The objection is sustained. The debtor questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]; however, the Claim is not properly completed where it claims a priority interest but did not specify which subsection of §507(a) supports that classification, as directed to on the proof of claim, Box 6. Thus, the Claim does not constitute prima facie evidence of the nature of the Claim. The objection is sustained and the Claim is disallowed as a priority claim and allowed as a general unsecured claim, except to the extent already paid as a priority claim by the trustee in excess of the dividend to unsecured claims.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

71. 03-93563-A-13 RANDALL & SHEILA SMITH  
JCK #1

HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
AMERICAN HONDA FINANCE  
3/30/04 [19]

**Disposition Without Oral Argument:** The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 019 on the Notice of Filed Claims, filed by American Honda Finance, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was January 13, 2004, and to file a government claim was March 2, 2004. American Honda Finance filed the Claim for \$3,257.71 on February 13, 2004.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

Counsel for debtors shall submit an order that conforms to the court's ruling.

72. 99-93163-A-13 JANET M. HERNANDEZ  
RMK #6

HEARING ON MOTION TO  
CONFIRM MODIFIED CHAPTER 13  
PLAN  
4/27/04 [91]

**Disposition Without Oral Argument:** Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This matter fails, *inter alia*, to comply with G.O. 03-03 ¶¶ 1(a) and 8(b), Fed. R. Bankr. P. 3015(g) and LBR 9014-1(f)(1)(requiring at least thirty-four days notice for motions to confirm plans modified after confirmation); LBR 9014-1(d)(2)(requiring the notice of hearing be filed as a separate document); 9014-1(d)(3)(requiring the notice of hearing for motions requiring written opposition (see G.O. 03-03 ¶ 8(b)) to state on whom, where and when written opposition must be served and when and where it must be filed); and LBR 9014-1(d)(6)(requiring that factual allegations made in the moving papers be supported by evidence). Debtor only provided twenty-nine days notice of this hearing. Pursuant to Fed. R. Bankr. P. 9006(c)(2), the time may not be shortened. Movant also filed a combination notice of motion and motion which makes no mention of the need to file and serve written opposition nor the procedure to do so. Finally, the proposed plan suspends missed plan payments and reduces the dividend to class 7 claims without any evidence as to why the debtor failed to make her plan payments.



A copy of the current local rules of this court is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court will issue a minute order.

73. 00-90664-A-13 MELVIN MENDES  
DN #2

HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
CREDITOR BANK UNITED FILED  
JUNE 19, 2000 FOR  
\$119,216.46  
4/8/04 [39]

**Disposition Without Oral Argument:** This objection has been filed pursuant to LBR 3007-1(d)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 7 on the court's Claims Register, filed by Bank United, ("Claim") is resolved without oral argument.

The objection is sustained. The debtor questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. In this instance the debtor has provided copies of two cancelled checks negotiated during the period claimant asserted was in arrears. The creditor has failed to respond to this objection and as such has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed in the amount of \$1,910.14. The Claim is allowed as a secured claim in the amount of \$117,306.32 with a pre-filing arrears in the amount of \$12,857.90.

Counsel for debtor shall submit an order that conforms to the court's ruling.

74. 00-90664-A-13 MELVIN MENDES  
DN #3

HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
CREDITOR GARTON TRACTOR INC.  
FILED SEPTEMBER 12, 2000  
FOR \$5,126.99  
4/8/04 [43]

**Disposition Without Oral Argument:** The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 10 on the court's Claims Register, filed by Garton Tractor, Inc., ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was July 11, 2000, and to file a government claim was August 10, 2000. Garton Tractor, Inc., filed the Claim for \$5,126.99 on September 12, 2000.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

Counsel for debtor shall submit an order that conforms to the court's ruling.

75. 04-90665-A-13 ROBERT & CARMEN CAMPOS HEARING ON MOTION TO  
SDH #1 VALUE COLLATERAL OF FORD  
MOTOR CREDIT  
4/14/04 [9]

**Disposition Without Oral Argument:** The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2002 Ford Explorer, had a value of \$11,200.00 on the date of the petition. Thus, \$11,200.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

76. 03-94167-A-13 ALLEN W. SANTOS HEARING ON MOTION TO  
JCK #3 CONFIRM DEBTOR'S THIRD  
AMENDED CHAPTER 13 PLAN  
4/13/04 [51]

**Disposition Without Oral Argument:** The debtors withdrew this motion on May 21, 2004. It is removed from the calendar.

77. 01-90469-A-13 TERESA PROFANT-HOOD CONT. HEARING ON OBJECTION  
DN #2 TO ALLOWANCE OF CLAIM OF  
LITTON LOAN SERVICING  
FILED MAY 16, 2003 FOR  
\$112,665.02  
2/12/04 [46]

**Tentative Ruling:** This matter continued from March 30, 2004 for debtor to correct service on claimant. Debtor did so and claimant has filed substantial opposition. Debtor requests additional time to research and produce evidence of additional payments.

The objection is overruled without prejudice to further objections based on other alleged payments. Debtor has objected to the amount of pre-filing arrears based on the allegation that specific payments were made. Claimant does not dispute the specific payments were made but argues that

they were credited to the payment then contractually due under the note. The payment history attached to the opposition supports claimant's argument. Each of the payments made from October 1999 to February 2001 appears on the payment history but was credited to the contractual payments due from May 1998 through February 1999.

Counsel for claimant shall submit an order that conforms to the court's ruling.

78. 03-93069-A-7 ROSS & GRACE SHINN  
TLC #1

HEARING ON DEBTORS'  
MOTION TO DISMISS  
4/12/04 [97]  
AMENDED MOTION FILED 4/14/04  
[102]

CASE CONV TO 7 EOD 4/20/04

**Disposition Without Oral Argument:** The motion is denied as moot. This case converted to chapter 7 April 20, 2004 on the chapter 13 trustee's motion. To the extent that debtors seek dismissal of the converted chapter 7 case, the motion is not on the correct calendar. Debtors may re-notice their motion on the proper calendar and provide notice to the chapter 7 trustee who is not listed on the proof of service for this motion.

The court will issue a minute order.

79. 04-90671-A-13 RUSTY & LINDA MARIA  
FW #1  
RUSTY & LINDA MARIA VS.

HEARING ON MOTION TO  
AVOID LIEN ON DEBTORS'  
RESIDENCE  
4/14/04 [12]

GOLDEN KEY AUTO AKA GOLD KEY  
ACCEPTANCE

**Disposition Without Oral Argument:** The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$210,000.00 as of the date of the petition. Debtors own a one-half interest in the subject property. The unavoidable liens total \$136,336.05. The debtors claimed the property as exempt under California Code of Civil Procedure Section 704.730(a)(2), under which they exempted \$75,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided subject to the provisions of 11 U.S.C. § 349.

Counsel for debtors shall submit an order that conforms to the court's ruling.

80. 04-90773-A-13 BENJAMIN & ROSA CHAVEZ  
RDG #1

HEARING ON TRUSTEE'S  
OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
4/19/04 [12]

**Disposition Without Oral Argument:** The objection to confirmation is overruled as moot and the motion to dismiss is denied. Debtors filed an amended plan on April 29, 2004 and have set it for a hearing on June 8, 2004. Having filed the amended plan which apparently cures the trustee's objections, there is no cause at this time to dismiss the case.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

81. 03-92474-A-13 DAVID & SUSAN PRUITT  
FW #1

HEARING ON MOTION TO  
MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
4/19/04 [35]

**Disposition Without Oral Argument:** The debtors withdrew this motion on May 20, 2004. The matter is removed from the calendar.

82. 04-90774-A-13 JOHN & BERNADETTE  
FW #1 MATHESON

HEARING ON MOTION TO  
VALUE COLLATERAL OF THE  
INTERNAL REVENUE SERVICE  
4/14/04 [10]

**Tentative Ruling:** The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Nevertheless, the court issues a tentative ruling.

The motion is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, consisting of all of debtors' personal property including their mobile home, had a value of \$74,769.00 on the date of the petition. There are senior liens totaling \$36,988.53. Thus, \$37,780.47 of its claim is an allowed secured claim, based on this valuation. This amount is higher than that sought in the motion. The difference results from debtors' April 28, 2004 amendment to schedule B increasing the value of their 2003 tax refund from \$500.00 to \$1,784.00.

Counsel for debtors shall submit an order that conforms to the court's ruling.

83. 04-90774-A-13 JOHN & BERNADETTE  
FW #2 MATHESON

HEARING ON MOTION TO  
CONFIRM FIRST AMENDED  
CHAPTER 13 PLAN  
4/14/04 [16]

**Tentative Ruling:** This matter is continued by the court to June 22, 2004

at 1:30 p.m. The debtors have amended their Schedule C to fully exempt all of their real and personal property. If no objections to the amended schedule are filed, the trustee's liquidation test objection will be moot. The objection period for the amended schedule ends June 16, 2004. Therefore a continuance is necessary.

The court notes that in light of the ruling at matter 82, the plan no longer provides for the entire amount of the Internal Revenue Service's secured claim. 11 U.S.C. § 1325(a)(5).

Counsel for debtor shall provide notice of the continued hearing to all parties in interest and shall file proof of such notice with the court.

84. 02-94680-A-13 DALJIT & JASBIR BASI  
DB #1

HEARING ON MOTION TO  
DISMISS, OR, ALTERNATIVELY,  
FOR RELIEF FROM STAY FILED  
BY MAX D. STONE FAMILY  
TRUST ET AL.  
4/27/04 [27]

**Tentative Ruling:** The motion to dismiss is denied. The motion for relief from the automatic stay is granted to the extent set forth herein.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

As to the movant's interest in the subject real and personal property, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with eviction from the real property, to foreclose on the business personal property both in accordance with applicable non-bankruptcy law, and to use the proceeds from its disposition to satisfy its claim.

As to the leased real property, cause exists for this relief because the debtors defaulted in making post-petition lease payments. The confirmed plan in this case assumed this lease and required the debtors to make all ongoing payments directly to the movant. It is undisputed that the debtors have failed to make two post-petition lease payments. As to the business personal property, cause exists because an event of default under this agreement is debtors' default under the aforementioned lease.

Relief from the stay under 11 U.S.C. § 362(d)(2) is inappropriate because even though the debtors have no equity in the subject property, the property is necessary for an effective rehabilitation because its operation is the source of funding for the chapter 13 plan. Movant's argument that the automatic stay may not apply is without merit. In order to evict the debtor and/or foreclose on the business personal property, movant will have to institute a judicial proceeding which action is stayed by Section 362(a)(1).

Finally, the motion to dismiss is denied. Movant's assertion that the plan has been in default since January 2004 because of lease payments

made late in January, February and March 2004 is unpersuasive. Debtors cured those defaults when movant accepted the late payments. As for late fees, the information sheet indicates they are "not being charged." As to the current defaults, the lesser remedy of granting movant relief from stay is sufficient. There is insufficient cause to dismiss the case at this time.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling. Pursuant to Bankruptcy Rule 9021, the order shall not recite the reasons stated herein. It shall state only that, for the reasons stated by the court and appended to the minutes of the proceedings, (1) the automatic stay is modified in order to permit the movant to proceed with eviction from the real property, to foreclose on the business personal property both in accordance with applicable non-bankruptcy law, and to use the proceeds from its disposition to satisfy its claim, (2) the motion to dismiss is denied, (3) the movant's request for fees is denied, and (4) except as so ordered, the motion is denied. See, Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 439 (9<sup>th</sup> Cir. BAP 1986).

85. 02-93382-A-13 MICHELLE L. SILVA  
HWW #3

HEARING ON MOTION TO  
MODIFY CHAPTER 13 PLAN  
4/28/04 [107]

**Tentative Ruling:** The trustee's objection is overruled. The first deed of trust's objection is overruled in part and conditionally overruled in part. The second deed of trust's objection is overruled in part and conditionally overruled in part. The motion to modify is conditionally granted, as set forth below.

Debtor and the trustee have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Respondent Citimortgage did not file within the time for opposition a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, Citimortgage has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii).

The feasibility objections filed by all parties are overruled. The debtor's amended Schedules I and J show an ability to pay the increase necessary to pay the correct amount of arrears on the Citimortgage claims. The first deed of trust's arrearage objection is conditionally overruled if debtor provides that the total arrears on the 1<sup>st</sup> DOT is \$18,198.12 in the order confirming plan. The second deed of trust's arrearage objection is conditionally overruled if debtor provides that the total arrears on the 2<sup>nd</sup> DOT is \$1,567.40 in the order confirming plan. Debtor is correct that the court only made a single fee award in the first motion for relief from stay filed by Citimortgage. That motion encompassed both deeds of trust and the fee is accounted for in the arrears on the first.

Subject to inclusion of the above changes, the motion is granted. In the absence of additional opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

86. 01-90384-A-13 FREDERICK & PATTI PAULINO HEARING ON MOTION TO  
FW #1 VALUE COLLATERAL OF HICKAM  
FEDERAL CREDIT UNION  
4/6/04 [85]

**Disposition Without Oral Argument:** The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 1990 Honda Civic, had a value of \$2,500.00 on the date of the petition. Thus, \$2,500.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

87. 03-91787-A-13 JOSE & JUNE RODRIGUEZ HEARING ON MOTION TO  
FW #2 MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
4/21/04 [29]

**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

88. 04-90493-A-13 ALAN & CINDY BERTA HEARING ON TRUSTEE'S  
RDG #1 OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
4/13/04 [36]

CASE DISMISSED EOD 4/28/04

**Disposition Without Oral Argument:** The objection is overruled as moot and the motion is denied as moot because the case was dismissed on April 28,

2004.

The court will issue a minute order.

89.	02-93196-A-13 DN #2	FREDDIE K. KEYS, JR. & SANDRA L. KEYES	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF CREDITOR INTERNAL REVENUE SERVICE FILED OCTOBER 17, 2002 4/8/04 [45]
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**Disposition Without Oral Argument:** This objection has been filed pursuant to LBR 3007-1(d)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 3 on the court's Claims Register, filed by the Internal Revenue Service, ("Claim") is resolved without oral argument.

The objection is sustained. The debtors question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. Ordinarily, the debtors need only object and provide sufficient evidence to rebut the prima facie evidence of the proof of claim to shift the burden to the creditor to prove up their claim. However, with regards to claims by the Internal Revenue Service, the Supreme Court has ruled that the burden of proof remains with the taxpayer. *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15, 21, 120 S.Ct 1951, 1956, 147 L.Ed.2d 13 (2000) ("Congress of course may do what it likes with entitlements in bankruptcy, but there is no sign that Congress meant to alter the burdens of production and persuasion on tax claims."); see also *Rockwell v. C.I.R.*, 512 F.2d 882, 885-6 (9<sup>th</sup> Cir. 1975).

In this instance, the debtors provide a copy of their 2000 tax return to rebut the unassessed liability for that year contained in the claim. The return shows a liability of \$2,624.00 for year 2000 rather than the \$10,000 contained in the claim. Accordingly, the objection is sustained and the Claim is disallowed as filed and allowed as a priority claim in the amount of \$2,796.80 and a general unsecured claim in the amount of \$937.57.

Counsel for debtors shall submit an order that conforms to the court's ruling.

90.	03-94596-A-13 FW #2	ALEJANDRO CASTRO	HEARING ON MOTION TO MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN 4/12/04 [41]
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**Tentative Ruling:** The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(4). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. §



1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

91.	04-90397-A-13    KENNETH R. WARWICK RDG #1	HEARING ON TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 4/14/04 [11]
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**Disposition Without Oral Argument:** The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The trustee's objection is sustained. It is undisputed that debtor has not filed the spousal waiver required by California Code of Civil Procedure Section 703.140(a)(2).

Counsel for trustee shall submit an order that conforms to the court's ruling.

92.	04-90997-A-13    JERRY L. WALKER & RLE #1            DEBORAH A. MEDEIROS-WALKER	HEARING ON OBJECTION TO CONFIRMATION OF DEBTORS' CHAPTER 13 PLAN FILED BY DAIMLERCHRYSLER SERVICES NORTH AMERICA LLC VS. 4/19/04 [11]
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**Tentative Ruling:** Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The objection is conditionally overruled if debtors provide for 11.90% interest on DaimlerChrysler's claim as consented in their reply.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee and by counsel for DaimlerChrysler.

93.	01-91799-A-13    STEVEN & NANCY MARKLUND DN #3	HEARING ON MOTION TO MODIFY PLAN 4/8/04 [64]
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**Tentative Ruling:** The trustee's objection is conditionally overruled if debtors provide that Class 7 claims will receive "70.32% or the amount necessary to complete case in month 36". With that further modification,

the motion is granted. In the absence of additional opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

94. 03-95099-A-13 ROSENDO A. UMALI  
RDG #2

HEARING ON TRUSTEE'S  
OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
4/13/04 [28]

**Tentative Ruling:** The trustee's objections are sustained, confirmation is denied, and the motion to dismiss is conditionally denied, as set forth below.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's objection to confirmation, and confirmation is denied. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(4) and (a)(6) and 1325(b). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The trustee's motion to dismiss is conditionally denied. The debtor shall have until June 4, 2004 (i) to provide the trustee with the missing business documents, file the necessary amendments to his schedules, and to file and set for hearing on the next available date that provides adequate notice a motion to confirm a plan that cures the defects noted by the court and the trustee or (ii) to convert the case to Chapter 7. If the debtor does neither of those things, the trustee shall certify said non-compliance by ex parte declaration and the court will dismiss the case without further notice or hearing.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

95. 04-91014-A-13 ALFREDO & DIANNA GOMEZ  
JMG #1  
BANK OF AMERICA VS.

HEARING ON MOTION FOR  
TERMINATION OF AUTOMATIC  
STAY  
5/6/04 [14]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-

1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

96.	03-94733-A-13 DANNY & ROBERTA MENDOZA FW #2	CONT. HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 4/1/04 [32]
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**Tentative Ruling:** This matter continued from May 11, 2004 for the debtors to supplement the record. Nothing additional having been filed, the court reissues its prior ruling.

The trustee's objections are sustained, and the motion to modify is denied, as set forth below.

Respondent has consented in the opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Movant did not file within the time for reply a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(iii).

The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(4) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

97.	00-90935-A-13 ERSUL & GAIL SANDERS LJK #4	HEARING ON MOTION TO AUTHORIZE DEBTORS' TO INCUR DEBT TO REFINANCE RESIDENCE 5/10/04 [64]
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**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

98.	03-91237-A-13 DAVID & ELLEN THATCHER MB #1 COUNTRYWIDE HOMES LOANS, INC. VS.	HEARING ON RESTORED MOTION FOR RELIEF FROM AUTOMATIC STAY 5/10/04 [41]
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**Disposition Without Oral Argument:** Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in

rendering a decision on this matter.

The objection to claim is overruled without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This matter fails to comply with LBR 9014-1(f)(f)(requiring at least twenty-eight days notice of a motion that requires written opposition). Movant only provided twenty-six days notice of the original hearing and eighteen days notice of this hearing.

The court will issue a minute order.

99.	03-93037-A-13 JAVIER MONTES FW #1	HEARING ON MOTION TO INCUR DEBT 5/10/04 [25]
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**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

100.	04-90341-A-13 GUADALUPE R. HOLQUIN IAM #1	HEARING ON OBJECTIONS TO CONFIRMATIONS 5/10/04 [21]
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**Disposition Without Oral Argument:** Oral argument would not benefit the court in rendering a decision in this matter.

The creditor's objection is overruled as moot. While the debtors failed to respond to this objection, the court's review of the docket shows they filed amended plan on May 13, 2004. Thus, the plan to which the creditor objected is no longer before the court. The court notes the confirmation hearing on the amended plan is June 22, 2004. (ECF-28).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

101.	02-91443-A-13 CONCEPCION HERNANDEZ WGM #1 WASHINGTON MUTUAL BANK, FA VS.	CONT. HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 3/30/04 [42]
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**Disposition Without Oral Argument:** This matter was continued by court-approved stipulation to June 22, 2004, at 1:30 p.m., and is removed from calendar.

102.	03-90445-A-13 LARRY & CHRISTINE BROOKS JCK #2	CONT. HEARING ON SECOND MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 3/31/04 [67]
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**Tentative Ruling:** This matter was continued from May 11, 2004 for a one-

time continuance, and no new documents having been filed in this matter, the court re-issues the prior ruling.

The trustee's objections are sustained, and the motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (a)(6). The debtors also failed to adequately explain how their schedule I "erroneously listed" Christine Brooks' income. Furthermore, attaching amended schedules to a motion does not properly put the amended schedules before the court. Amended schedules must be separately filed with the Official Amendment Cover Sheet, known as interactive form EDC 2-015 (rev. 11/1/2003). See, Bankruptcy Rule 1009; Guidelines for Preparation of Documents ¶ 3(a).

Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

103. 03-91792-A-13 DONALD MARTINEZ  
FW #1

HEARING ON MOTION TO  
INCUR DEBT  
5/6/04 [30]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

104. 03-94705-A-13 JOHN & ROBIN IVY  
JCK #1

CONT. HEARING ON MOTION TO  
RECONSIDER/VACATE ENTRY OF  
ORDER OF DISMISSAL (OST)  
4/30/04 [27]

**Tentative Ruling:** None.